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IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5921 OF 2000

1. Hindustan Petroleum Corporation Ltd., a Govt. of India Undertaking and a Company incorporated under the Companies Act, 1956 having its Registered Office at 17, Jamshedji Tata Road, Churchgate, Mumbai 400 020.

2. Arthur Patrick Rangel, of Bombay Indian Inhabitant having my office at R & C) Building, Sr. J.J.Hospital Byculla, Mumbai 400 008. ... Petitioners.

Vs.

1. Maharashtra Industrial represented by the Secretary, Department of Weights & Meisures,Mumbai)

2. The Controller of Legal Metrology.

3. The Assistant Controller Metrology.

4. The Inspector of Weights and Measures, Department of Legal Metrology, Vashi) Division-II, Dist. Thane "Pitruchhaya" near Mandlik Gas, Railway-B Cabin, Navpada, Thane (West).

5. The Inspector of Weights and Measures, Department of Legal Metrology,Haveli) Division-II, 892 Synegauge

Street, Pune-411 001.) ... Respondents.

Mr. M.D. Siodia i/b M/s. Rustamji Ginwala
for the petitioner

None for the Respondent Nos. 1 to 5.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 24, 2007.

P.C.:

. Heard the learned counsel for the petitioners. Petitioners by filing this Writ Petition under Article 226 of the Constitution of India, seeks declaration that provisions of the Standards of Weights and Meausres (Enforcement) Act 1985 [hereinafter referred to as the said Act] and the Standards of Weights and Measures (Enforcement) Rules 1987, have no application to the "flow-meters" used by the first petitioner at their depot throughout Maharashtra and further they are not liable to get said flow meters stamped and or verified under the said Act and the said Rules. The petitioners also challanged legality and validity of the impugned letter dated 1st January 2000, 27th January 2000 and 24th January 2000, Exh. A, C and G to the petition

issued by the Inspector of Legal Metrology, Vashi, Inspector of Legal Metrology Haveli and Inspector of Department of Legal Metrology Vashi respectively. The petitioner consequently also prays for orders restraining respondents from sealing the first respondent's flow-meters at various depots in Maharashtra.

2. The petitioner no.1 is the Company incorporated under the Companies Act 1956 and it is a Government of India undertaking engaged in refinery storage, distribution and sale / marketing of petroleum and petrolium products through out the country. Petitioner has depot terminoids for storage and distribution of its products in Vashi, Navi Mumbai and Loni, Pune, where large tanks are set up and products are transported through pipelines, tanks, or tank lorries.

3. Tankers and tank lorries are filled with petrolium and petrolium products for distribution from these depots / terminus. The petitioner transports its products as per demand through out the State including various retail outlets and

dealers for distribution to the consumers. Some of the tank lorries are transporting the petroleum and its allied products from depot / terminus to the retail outlets which are owned by the petitioner no.1 or taken on contract by it from private transport contractors. It is the case of the petitioner that all these trucks and lorries are built and fabricated as per specifications of the Petrolium Act 1934. Said tanks, trucks and lorries are provided with the "deep rod", which is duly calibrated, verified and stamped by the Weights and Measures authorities as per the standards of Weights and Measures (enforcement) Act 1985. It is specific contention of the petitioner that this **deep rod** is being used as standard measure by the petitioner as well as retailers and dealers.

4. Petitioner further contends that in order to avoid over flow and spillage of the petroleum/ petroleum products and for internal checking, they have installed **"flow meters"** on the loading gantries. However, such flow meters are not used by the petitioners as weights and measures for supply of petrolium products and in fact quantity

in tank lorries is measured by using the deep rod, which is duly calibrated and verified and stamped by the concerned weights and Measurement authorities.

5. The respondent no.4 by impugned letter dated 1st January 2000 addressed to the petitioner no.1 stating interalia that if they failed to do rechecking and stamping of flow meters within 10 days of receipt of the said letter, then their office would take legal action against the petitioner. The respondent no.5 also wrote letter dated 27th January 2000 to the petitioner and directed the petitioner to recheck and stamp the meters within 15 days or legal action will be taken under the said Act.

6. Petitioners in reply to the letter of respondent no.4 dated 1st January pointed out that deliveries of the petrolium and its allied products are based on deep rod of tank truck which is duly calibrated and verified by appropriate authority. However, respondent no.4 again issued letter dated 24th January 2000 and rejected the contention of the petitioner.

7. It is the case of the petitioner as mentioned above that flow meters are not being used as weights and measures for supply of petrolium product and quantity in tank lorry is measured by using the deep rod. It is further contention of the petitioner that flow meters are used for internal checking and verification and to avoid over flow and spillage of petrolium and its allied products. By no stretch of imagination, it can be said that the same is used for commercial transaction, industrial measurement and or measurement involved in the nature of public health and human safety. The petitioner in order to substantiate its contention relied upon judgment and order dated 29th November 1996 delivered by the Division Bench of this High Court in Writ Petition No. 518 of 1989 in **Bharat Petrolium Corporation Vs. State of Maharashtra.**

8. None appeared for the respondents.

9. We have given our anxious consideration to the submissions of the learned counsel for the petitioners. We have also gone through the

pleadings and records of the Writ Petition. We have also gone through the judgment of the Division Bench in Writ Petition No. 518 fo 1989. After going through the aforesaid material on record, we are of the view that the point involved in the above said Writ Petition is squarely covered by the decision of the abovesaid Writ Petition.

10. The facts in the Writ Petition and that of Writ Petition No. 518 of 1989 are similar. The Division Bench interpreted word "transaction" used in Section 24 of the said Act and came to the conclusion that no commercial transaction takes place at the depot. The Division Bench also came to the conclusion that the measurements as far as corporation itself or private party or private transport carrier is concerned, is determined on the basis of a **"deep rod"**, which is fixed in each tank- lorry and it is duly calibrated, marked and stamped by the Weights and Measures authority. It is further concluded that flow meters are provided to avoid over flow or spillage of petroleum products and to provide faster speed of filling the tanks and for better loss control, and

therefore, it is concluded that act of filling at depot, as described above, cannot be termed as a transaction within the meaning of section 24 of the said Act.

11. In view of the above decision, which is squarely applicable to the facts and circumstances of the case, we hold and declare that provisions of said Act and said Rules have no application to the flow meters used by the first petitioner at their depots through out Maharashtra and the petitioners are not bound to get the said flow meters stamped or verified under the said Act. Consequently, we quash and set aside the order dated 1st January 2000, 24th January 2000 issued by the respondent no.4 and order dated 27th January 2000 issued by respondent no.5 at Exh. A, C and G respectively.

12. With this observation, rule is made absolute with no orders as to costs.

Sd/- Sd/-

_**[R. V. MORE, J.]** **[F. I. REBELLO, J.]**